

## **REMARKS**

Claims 49 – 54, 56 – 75, 77 – 88, and 90 – 99 are currently pending in the application. Claims 58, 66, 90, and 96 have been amended. Reconsideration is respectfully requested in view of the following remarks.

### **Rejections Under 35 U.S.C. § 102**

Claims 49, 51, 55, 57, 73, 74, 76, 80 – 83, 85, and 97 – 99 are rejected under 35 U.S.C. §102(b) as being anticipated by Mihara et al. (U.S. Patent No. 5,481,757, hereinafter “Mihara”). Applicant respectfully traverses the rejections in light of the following remarks.

Anticipation under §102(b) requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed below, Mihara fails to disclose each and every element of the claimed invention.

Applicant’s claim 49 recites:

49. A method for controlling access to a continuous stream of a content transmitted over a plurality of communication paths, the method comprising:

transmitting from a server a plurality of notifications for determining a sequence of transmission of said continuous stream of said content via a plurality of communication paths;

obtaining by a client said plurality of notifications;

transmitting from said server said continuous stream of said content via said plurality of communication paths according to said sequence of transmission; and

obtaining by said client said continuous stream of said content by automatically switching communication paths in accordance with said

sequence of transmission of said content based on said plurality of obtained notifications.

Mihara discloses a cable television (CATV) communication system including two-way communication. As is well known in the prior art, Mihara's system allows for the broadcasting of CATV signals over different channels at different respective frequencies. Applicant submits that Mihara fails to teach or suggest numerous limitations of Applicant's claims. For example, Mihara does not teach or suggest a method comprising "transmitting from a server a plurality of notifications for determining a sequence of transmission of said continuous stream of said content via a plurality of communication paths" as recited in claim 49. Applicant can find no teaching or suggestion of transmitting a plurality of notifications or determining a sequence of transmission of a continuous stream of content via a plurality of communication paths at the various passages cited by the Office Action (e.g., col. 7, lines 2 – 20 and col. 9, lines 26 – 29 and 62 – 67) or elsewhere in Mihara.

Applicant also cannot find any teaching or suggestion in Mihara of the limitations "obtaining by a client said plurality of notifications," "transmitting from said server said continuous stream of said content via said plurality of communication paths according to said sequence of transmission," or "obtaining by said client said continuous stream of said content by automatically switching communication paths in accordance with said sequence of transmission of said content based on said plurality of obtained notifications." At the various passages cited in the Office Action, Mihara generally discloses well-known techniques for transmitting a CATV signal over a particular channel and frequency. At col. 5, lines 15 – 20, Mihara discloses switching to a particular channel at a particular time (e.g., to view a pay-per-view transmission). However, this passage in Mihara refers to transmitting and receiving content over a single channel (e.g., a pay-per-view channel). There is no teaching or suggestion in Mihara that a continuous stream of content is transmitted via a plurality of communication paths according to a sequence of transmission.

For at least the reasons discussed above, Applicant respectfully submits that independent claims 49, 73, and 83 are patentably distinct from the cited references. The

dependent claims 51, 55, 57, 73, 74, 80 – 82, 85, and 97 – 99 provide additional limitations to the independent claims and are patentably distinct for at least the same reasons as the independent claims. Accordingly, Applicant respectfully requests withdrawal of the §102(b) rejections.

### **Rejections Under 35 U.S.C. § 103**

Claims 50, 56, 75, 77 – 79, and 84 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mihara in view of Beyers II, et al. (U.S. Patent No. 5,235,619, hereinafter “Beyers”). Claims 52 – 54 and 86 – 89 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mihara in view of Hendricks, et al. (U.S. Patent No. 6,828,993, hereinafter “Hendricks”). Claims 58 – 63, 65, and 90 – 94 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwamura, et al. (U.S. Patent No. 6,396,814, hereinafter “Iwamura”) in view of Dureau (U.S. Patent No. 6,721,958). Claims 66 – 69, 72, and 96 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwamura in view of Beyers. Claims 64, 70, 71, and 95 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwamura in view of Beyers and further in view of Dureau. Applicant respectfully traverses the rejections in light of the following remarks.

To establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. Applicant respectfully submits that the cited references, taken individually or in combination, do not teach or suggest all the limitations recited in the claims.

For at least the reasons discussed above regarding Mihara, Applicant respectfully submits that claims 50, 52 – 54, 56, 75, 77 – 79, 84, and 86 – 89 are patentably distinct from the cited references.

Claim 58 has been amended to clarify that the encrypted notification comprises an indication of the given time and that the another encrypted notification comprises an

indication of the another given time. Support for the amendments to claim 58 may be found at least at page 25, lines 14 – 17 (“Consequently, member space manager 418 maintains the knowledge provided from head end server 402 and source space manager 414 regarding the mapping between streams/channels and frequency bands for a particular point in time”) and page 27, lines 20 – 23 (“At step 602, the switching algorithm or instructions regarding which channel to tune into at a particular time for a particular stream is placed into software (referred to as “switching software”)”). Claims 66, 90, and 96 have been amended to recite similar limitations.

Applicant’s claim 58 (as amended) recites:

58. A method for controlling access to a content having a plurality of parts transmitted over a plurality of communication paths, the method comprising:

transmitting an encrypted notification of a communication path on which a part of said content will be transmitted at a given time, wherein said encrypted notification comprises an indication of said given time;

transmitting said part of said content on said communication path at said given time;

transmitting another encrypted notification of another communication path on which another part of said content will be transmitted at another given time, wherein said another encrypted notification comprises an indication of said another given time; and

transmitting said another part of said content on said another communication path at said another given time.

Applicant respectfully submits that the cited references fail to teach or suggest a method comprising “transmitting an encrypted notification of a communication path on which a part of said content will be transmitted at a given time, wherein said encrypted notification comprises an indication of said given time” as recited in claim 58. In rejecting claim 58, the Office Action cited various passages from Iwamura including col. 5, lines 53 – 55; col. 6, lines 10 – 12; and col. 30, lines 55 – 59. At the cited passages and elsewhere, Iwamura discloses techniques for selecting communication paths between groups of devices and transferring data over the selected communication paths. However, Iwamura does not teach or suggest transmitting a notification comprising an indication of a given time at which a part of a content will be transmitted on a

communication path. Iwamura's reference to "time" cited by the Office Action (col. 5, lines 53 – 55: "the time required for executing a procedure is not increased with the increase in the number of component devices") is merely a reference to the intended efficiency and scalability of Iwamura's techniques. Therefore, Applicant submits that there is no teaching or suggestion in Iwamura of "transmitting an encrypted notification of a communication path on which a part of said content will be transmitted at a given time, wherein said encrypted notification comprises an indication of said given time."

For similar reasons, Applicant respectfully submits that the cited references fail to teach or suggest a method comprising "transmitting another encrypted notification of another communication path on which another part of said content will be transmitted at another given time, wherein said another encrypted notification comprises an indication of said another given time" as recited in claim 58.

For at least the reasons discussed above, Applicant respectfully submits that independent claims 58, 66, 90, and 96 are patentably distinct from the cited references. The dependent claims 59, 61 – 72, and 91 – 96 provide additional limitations to the independent claims and are patentably distinct for at least the same reasons as the independent claims. Accordingly, Applicant respectfully requests withdrawal of the §103(a) rejections.

## CONCLUSION

In light of the foregoing amendments and remarks, Applicants submit that all pending claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. If a phone interview would speed allowance of any pending claims, such is requested at the Examiner's convenience.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/6000-04802/BNK.

Respectfully submitted,



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Date: July 27, 2006